



Civil Resolution Tribunal

Date Issued: May 11, 2020

File: SC-2019-008849

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Enough Said Productions Inc v. Wright*, 2020 BCCRT 510

BETWEEN:

ENOUGH SAID PRODUCTIONS INC

APPLICANT

AND:

JOSEPH WRIGHT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a breach of contract claim.
2. The applicant, Enough Said Productions Inc, says the respondent, Joseph Wright, “rescinded on his agreement” to work on its film as the Director of Photography. It

says the respondent cancelled with only 36 hours' notice and it had to pay extra to keep the production on schedule. The applicant claims \$4,154.82 in damages.

3. The respondent disputes that he is liable for the claimed damages. The respondent says the parties had no enforceable contract and the applicant suffered no loss.
4. The applicant is represented by an employee or company principal. The respondent is self-represented.
5. I dismiss this dispute for the reasons that follow.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a

court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Did the parties enter into an enforceable contract?
 - b. Did the respondent breach the contract and if so, is he required to pay any or all of the claimed damages?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The background facts are as follows. The applicant was a production company producing a “micro budget” film. The film was scheduled to commence shooting on September 17, 2019. Near the end of August 2019, the parties discussed that the respondent would be the film’s cinematographer or Director of Photography. The parties met about 2 times and discussed the shooting of a few scenes. On August 24, 2019 the respondent asked the applicant’s producer to send a written contract, which was not sent until September 13, 2019. The applicant offered the respondent payment by e-transfer on September 10 and 14, 2019, which the respondent did not accept or deposit. On September 15, 2019 the respondent told the applicant he could not do the film. The respondent did not sign the contract. The applicant found a new cinematographer and started shooting the film on September 17, 2019, as scheduled. None of these facts are disputed.

13. The applicant says that the respondent was “actively involved” in the pre-production and it had no indication that he was not going to take the job. The respondent says his involvement was minimal. The evidence on the respondent’s level of involvement is not clear either way. The only objective evidence of the parties’ pre-production discussions are some emails and text messages. There are no witness statements or meeting notes. I find on the parties’ texts in evidence that the respondent seemed committed to work on the film until around September 10, 2019, when he did not accept payment.
14. The applicant says the respondent’s job as cinematographer was a “vital part of the film making process”, which is not disputed. The applicant says it had to “scramble” to find someone new when the respondent cancelled. It says with short notice and a small budget it ended up hiring a temporary inexperienced cinematographer, whose work it re-shot. It says it also paid extra for some equipment the respondent would have provided at a reduced rate had he taken the job. It argues that the respondent should pay these expenses.
15. The respondent says the parties never came to a “meeting of the minds” on the subject matter of the contract. He says he was not obligated to take the cinematographer job and he is not responsible for the applicant’s expenses. I agree with the respondent, as discussed further below.
16. For a valid contract to exist, the respondent is correct that the parties must have a “meeting of the minds”. This means that the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer by one party that is accepted by the other, plus valuable “consideration”. “Consideration” means payment of money or something else of value. (See discussion on contract formation in *Redfern Resources Ltd. (Re)*, 2012 BCCA 189 and *Fairchild Developments Ltd. v. 575476 B.C. Ltd.*, 2020 BCCA 123.)
17. I find the respondent did not intend to take the job offer without first reviewing and agreeing to terms set out in writing. The texts in evidence show the parties

discussed start dates, equipment, and film location. However, the texts do not show an agreement on compensation, services, and film credit, which I find are essential terms in a contract for a film cinematographer. Also, these terms appear in the written contract prepared by the applicant's lawyer. Since the respondent never signed the written contract or said he would sign the contract, I find he did not agree to all its essential terms. I find the parties' interactions lacked a mutual intention to be bound, acceptance and certainty of terms. Therefore, I find the parties had no valid employment contract.

18. I appreciate that the applicant's crew likely felt a "tremendous amount of stress" when the film was left without a cinematographer within a few days of shooting. However, I find the respondent was not required to accept the applicant's job offer. I find it was the applicant's obligation to ensure it had secured an employment contract with its cinematographer prior to its chosen shooting date. At any rate, the applicant was able to hire a replacement cinematographer, proceed with the film on schedule, and provided no financial documents proving it suffered any loss.
19. I find the applicant has not established on a balance of probabilities that the respondent must pay it anything for refusing the applicant's job offer. I dismiss the applicant's damages claim.
20. As the applicant was unsuccessful, I dismiss its claim for tribunal fees. There were no expenses claimed.

ORDER

21. I dismiss the applicant's claims and this dispute.

Trisha Apland, Tribunal Member